

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 218

Citations Affected: IC 9-19-10-7; IC 34-51-2-1.5; IC 34-51-2-11.

Synopsis: Safety belts. Provides that evidence of failure to comply with the laws concerning safety belt use may be admitted as evidence in a civil action to reduce damages for injury to a person who is at least 15 years of age at the time of the accident, and may limit the liability of an insurer. Provides that the defendant has the burden of establishing that use of a safety belt would have reduced injuries. Provides that if evidence that the plaintiff failed to comply with the laws concerning seat belt safety is admitted in a civil action, a court shall admit evidence that: (1) a driver who is a defendant was intoxicated at the time of the accident; or (2) a defendant caused or contributed to the accident in violation of Indiana law. Requires certain expert testimony to establish that a plaintiff failed to comply with the safety belt law. Requires a defendant to plead an affirmative defense if the defendant asserts that a plaintiff failed to comply with the safety belt law. Permits damages to be reduced by not more than 4% arising from a cause of action involving an accident in which a plaintiff failed to comply with the safety belt law. Requires a court to issue certain instructions to a jury concerning damage reductions and to furnish a specific jury form if evidence was submitted to the jury to prove that a plaintiff failed to comply with the safety belt law. **(This conference committee report adds provisions: (1) requiring certain expert testimony to establish that a plaintiff failed to comply with the safety belt law; (2) requiring a court to admit certain evidence submitted to the court if the court has admitted evidence that a plaintiff failed to comply with the safety belt law; (3) requiring a defendant to plead an affirmative defense if the defendant asserts that a plaintiff failed to comply with the safety belt law; (4) permitting damages to be reduced by not more than 4% arising from a cause of action involving an accident in which a plaintiff failed to comply with the safety belt law; (5) requiring a court to issue certain instructions to a jury concerning damage reductions and to furnish a specific jury form if evidence was submitted to a jury to prove that a plaintiff failed to comply with the safety belt law.)**

Effective: July 1, 2005.

Adopted

Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 218 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 9-19-10-7 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. ~~(a) Failure to comply~~
- 4 ~~with section 1, 2 3, or 4 of this chapter does not constitute fault under~~
- 5 ~~IC 34-51-2 and does not limit the liability of an insurer.~~
- 6 ~~(b) Except as provided in subsection (c); (a) Evidence of: the~~
- 7 ~~(1) failure to comply with section 1, 2 3, or 4 of this chapter may~~
- 8 ~~not be admitted in a civil action to mitigate reduce damages for~~
- 9 ~~injury to a person who is at least fifteen (15) years of age at the~~
- 10 ~~time of the accident; and~~
- 11 ~~(2) (c) Evidence of a failure to comply with this chapter may be~~
- 12 ~~admitted in a civil action as to mitigation of damages in a product~~
- 13 ~~liability action involving a motor vehicle restraint or supplemental~~
- 14 ~~restraint system.~~
- 15 ~~(b) The defendant in such an action described in subsection (a)(1)~~
- 16 ~~has the burden of proving:~~
- 17 ~~(1) noncompliance with section 2 of this chapter; and~~
- 18 ~~(2) that compliance with section 2 of this chapter would have~~
- 19 ~~reduced injuries; and~~
- 20 ~~(3) the extent of the reduction.~~
- 21 ~~(c) The defendant in an action described in subsection (a)(2) has~~
- 22 ~~the burden of proving:~~

(1) noncompliance with this chapter;

(2) that compliance with this chapter would have reduced injuries; and

(3) the extent of the reduction.

(d) In order to meet the burden of proof described in subsection (b), the defendant shall introduce expert testimony to:

(1) prove that compliance would have reduced injuries; and

(2) prove the extent of the reduction in damages.

(e) A defendant may establish a plaintiff's noncompliance with section 2 of this chapter with:

(1) evidence from:

(A) an eyewitness;

(B) an expert witness; or

(2) an admission from the plaintiff.

(f) If a defendant asserts that a plaintiff failed to comply with section 2 of this chapter, the defendant must plead as an affirmative defense that the plaintiff failed to comply with section 2 of this chapter in a responsive pleading in the manner required by the Indiana Rules of Trial Procedure.

(g) If a court admits evidence that a plaintiff failed to comply with section 2 of this chapter and evidence had been submitted to the court that a driver who is a defendant was intoxicated (as defined in IC 9-13-2-86) at the time the accident occurred, the court shall admit evidence of the driver's intoxication.

(h) If a court admits evidence that a plaintiff failed to comply with section 2 of this chapter and evidence has been submitted to the court that a defendant caused or contributed to the accident in violation of an Indiana law, the court shall admit evidence of the defendant's violation of Indiana law.

(i) Damages described in subsection (a)(1) may not be reduced more than four percent (4%) for failing to comply with section 2 of this chapter. This subsection does not apply to damages described in subsection (a)(2).

(j) Neither the failure to comply with section 2 of this chapter nor a reduction of damages under this section for the failure to comply with section 2 of this chapter constitutes fault under IC 34-51-2.

(k) If a court admits evidence of a plaintiff's failure to comply with section 2 of this chapter:

(1) the court shall instruct the jury that the maximum amount that damages may be reduced is four percent (4%);

(2) the court shall require the jury to determine the percentage that the plaintiff's damages are reduced separate from the determination of fault, if any, that the jury attributes to the plaintiff under IC 34-51-2; and

(3) the court shall instruct the jury to determine its verdict in accordance with IC 34-51-2-7 and IC 34-51-2-8.

SECTION 2. IC 34-51-2-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. In an action to determine liability in which a court admits evidence of a plaintiff's failure to comply with IC 9-19-10-2, the court shall instruct the jury to determine its**

1 **verdict in accordance with sections 7 and 8 of this chapter.**

2 SECTION 3. IC 34-51-2-11 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. The court shall
4 furnish to the jury forms of verdicts that require only the disclosure of:

5 (1) the percentage of fault charged against each party and nonparty;
6 **and**

7 (2) the amount of the verdict against each defendant; **and**

8 **(3) the percentage that a plaintiff's damages are reduced if**
9 **evidence was submitted to a jury to prove that the plaintiff**
10 **failed to comply with IC 9-19-10-2.**

11 If the evidence in the action is sufficient to support the charging of fault
12 to a nonparty, the form of verdict also shall require a disclosure of the
13 name of the nonparty and the percentage of fault charged to the
14 nonparty.

15 SECTION 4. [EFFECTIVE JULY 1, 2005] **IC 9-19-10-7, as**
16 **amended by this act, applies only to causes of action arising after**
17 **June 30, 2005**

 (Reference is to ESB 218 as reprinted March 29, 2005.)

Conference Committee Report
on
Engrossed Senate Bill 218

Signed by:

Senator Nugent
Chairperson

Representative Whetstone

Senator Howard

Representative Kuzman

Senate Conferees

House Conferees